IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Crl.MC.No. 2352 of 2007()

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CC.1/2007 of ENQUIRY COMMR. & SPL. JUDGE, THRISSUR

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PETITIONER: ACCUSED NO.1:

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C.L.MARY, ASSISTANT EXECUTIVE ENGINEER
(TECHNICAL ASSISTANT), KERALA WATER DIVISION,
COCHIN-14.

BY ADV. SRI.SIVAN MADATHIL

RESPONDENTS: COMPLAINANT:

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STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J.**

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Crl.M.C.No.2352 of 2007

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Dated this the 20th day of August 2007

**O R D E R**

The petitioner is the first accused in C.C.No.1/2007 pending before the Enquiry Commissioner and Special Judge, Thrissur. The petitioner has come to this court with the prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioner.

2. Cognizance was taken by the Special Judge on the basis of a final report submitted by the investigating officer of the Vigilance Department after completing the investigation. Cognizance has now been taken for the offences punishable inter alia under Section 15 read with 13 of the Prevention of Corruption Act and Sections 409, 468, 471 and 477(a) as also Section 120(B) I.P.C.

3. The short prayer of the petitioner is that the proceedings against the petitioner may be quashed invoking the powers under Section 482 Cr.P.C. The application is opposed by the learned Public Prosecutor. The crux of the allegations against the petitioner is that the third accused, a contractor, had agreed to supply pipes to the Kerala Water Authority. Without and before the third accused supplied the necessary pipes in accordance with the terms of the contract, accused 1 and 2 had allegedly made records to make it

appear that the supply has been effected and that amounts are liable to be released to the third accused. The superior official (who initially was arrayed as the third accused) allegedly did not accept the same suspecting foul play. It is thus that the proceedings were initiated. The police, in the course of investigation came to the conclusion that the petitioner as also the second and third accused are liable to be proceeded against. It is prayed that powers under Section 482 Cr.P.C may be invoked to quash the proceedings.

4. What is the ground? The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The proceedings have been initiated by the de facto complainant actuated by ulterior and oblique motives. The petitioner had not complied with his request for making payments to the employees' union and this had prompted the de facto complainant to make wild allegations against the petitioner.

5. At this early stage, I shall scrupulously avoid any detailed discussions on merits which might encumber the records and unnecessarily prejudice the interests of the parties. Suffice it to say that after elaborately hearing the learned counsel for the petitioner, I am not persuaded to agree that this is a fit case where the extraordinary inherent jurisdiction under Section 482 Cr.P.C can or ought to be invoked. This, I am satisfied, is a fit case where the petitioner must appear before the learned Special Judge and claim

premature termination of proceedings by discharge. Needless to say, the Special Judge will have to consider such plea on merits and take appropriate decision in the matter. The prayer for quashing of proceedings cannot now be accepted in the circumstances pointed out.

6. In every case where premature termination by discharge or a later acquittal is possible, it is not necessary or proper for this court to invoke the powers under Section 482 Cr.P.C to bring such proceedings to premature termination. Code provides procedures for persons who claim premature termination of proceedings when they are entitled to do the same. Exceptional circumstances available in a given case may persuade this court to invoke the powers under Section 482 Cr.P.C and quash the proceedings. That is the exceptional course to be resorted to in aid of justice when circumstances compellingly persuade the court to resort to that course. I need only observe that at the moment and with the available inputs, I am not persuaded to invoke such powers under Section 482 Cr.P.C.

7. This Criminal Miscellaneous Case is in these circumstances dismissed.

**(R.BASANT, JUDGE)**

jsr

// True Copy// PA to Judge

**R.BASANT, J.**

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007